

**TESTIMONY IN OPPOSITION TO SB 3  
REVISING TELECOMMUNICATIONS LAW**

**Greg Jergeson  
Chairman, Montana PSC  
January 15, 2007**

Mr. Chairman and Members of the Committee,

The Public Service Commission unanimously opposes Senate Bill 3. There have been no substantive changes to this deregulation bill since it was introduced in the 2005 session as House Bill 539. Under this bill, the definition of regulated telecommunications services is revised to mean only the end user's access line. All other features and services provided by regulated phone companies would be deregulated.

Qwest and other wireline companies will argue that they are being harmed by competition from unregulated wireless and cable TV companies and need this bill in order to "level the playing field." Committee members should bear in mind that cable TV is not available everywhere in Montana. Wireless coverage is still incomplete in some areas and is still viewed by most people as a complement to, not a substitute for, their home and business wireline services. In addition, based on the PSC annual report for the most recent year available, 2005, Qwest appears to be earning significantly in excess of its authorized rate of return, and does not seem to be a company whose profitability is suffering as a result of competition.

Qwest and other supporters of SB 3 have established no economic basis for deregulating every service but access lines. This would literally involve the deregulation of hundreds of services which are currently regulated. You are being asked to deregulate these services with no analysis of whether there are substitutes or competition for these services or whether any of these services are essential services for consumers. In essence, you are being asked to deregulate a significant portion of the regulated telecommunications market in Montana with absolutely no knowledge of the potential impacts on consumers and competition.

If a market for service is workably competitive, it should be entirely deregulated. If a market for service is not competitive and it is deregulated, there is no market force to discipline the carrier that was deregulated. It is premature to deregulate all currently regulated telecommunications service in Montana except access lines until all telecommunications markets

in Montana are effectively competitive. Mechanisms exist in current law for reducing or eliminating regulation when circumstances warrant it, and there are many examples of the PSC doing just that. Deregulation of telecommunications services should occur only when it has been determined to be appropriate in a PSC proceeding open to interested parties, where evidence is presented, deliberately considered, and acted on.

We understand that Qwest and MTA will offer amendments to Senate Bill 3. The PSC supports the proposed amendments to the Promotions section, which appear to amend the section to mirror the provisions of the PSC-drafted bill, HB 244, which the PSC supports. However, the PSC does not support the amendments to the Definitions section because they merely substitute deregulation of optional services for vertical services and, therefore, do not address our consistently stated concern about premature deregulation in the absence of a demonstration of the presence of an effectively competitive market.

Attached to my written testimony is the PSC's analysis of Senate Bill 3.

The PSC urges a DO NOT PASS on Senate Bill 3.

Attachment (PSC analysis of SB 3)

## **PSC ANALYSIS & COMMENTS ON SB 3**

### **GENERAL POINTS**

- It is premature to deregulate all telecommunications service except access lines until the telecommunications market is effectively competitive. There is no economic basis for deregulating every service but access lines. If a market for service is workably competitive, it should be entirely deregulated. If a market for service is not competitive and it is deregulated, there is no market force to discipline the carrier that was deregulated.
- This bill is unnecessary, given the steps the PSC has taken and continues to take to reduce regulation and to deregulate services as competitive markets develop.
- Under existing law, Qwest or other telephone companies may seek an alternative form of regulation that could have a similar effect as the deregulation of services proposed by SB 3.
- PSC authority to enforce customer service protections is eliminated with regard to the deregulated services.
- Qwest appears to be earning significantly more than its authorized rate of return in Montana, which belies its argument that competition presents a threat that justifies deregulation.

### **SPECIFIC SECTIONS OF BILL**

#### **SECTION 1: PROMOTIONS**

The amendments to §69-3-305 would allow a telecom provider to use promotions to offer any of its services at a discounted price at any time. Also, although the first sentence of §69-3-305(5)(a)(i) in this bill provides that promotions, market trials and other promotional activities may be offered for a limited period of time, there is no definition of "limited period of time" and, under (5)(c), it is not clear the PSC would have the authority to define it because the PSC would not be able to define the appropriate scope of the promotional activities of telecom providers.

- HB 244 would allow regulated telephone companies to offer every kind of promotion without advance PSC approval, but retains PSC oversight to determine the appropriate scope and to resolve complaints.

#### **SECTION 3: DEFINITIONS (most critical section of SB 3)**

The subsection (10)(a) amendment restricts the definition of "regulated telecommunications service" to "a residential or business end user's access lines." The proposed change at (10)(b) explicitly states that "vertical services" are not regulated services. "Vertical services" are ambiguously defined as any option that a customer can add to his/her basic service.

- (10)(a) amendment limits PSC regulatory jurisdiction to an end user's access line, which effectively deregulates all other services currently regulated. Examples of currently regulated services that will or may be deregulated include:

- All N11 services, which include 911 emergency reporting; 711 telephone relay service for hearing impaired; 511 road information; 411 directory assistance; and 211 community services referral
- Operator service and directory assistance rates
- Wholesale bottleneck services such as carrier access
- Vertical services (call forwarding, call waiting, caller ID, call trace, etc.)
- Listing services (unpublished and unlisted numbers)
- Intrastate long distance service
- Centrex (central office substitute for a PBX)
- Amended definition of “regulated telecommunications service” would eliminate rate, terms, conditions and service quality regulation for non-access line services.
  - PSC’s role in resolving telephone customer complaints would be eliminated for the deregulated services, such as long distance service.
  - Deregulation of carrier access services that are essential to interexchange carriers would be detrimental to those carriers.

#### **SECTION 4: COMBINED SERVICES**

This section requires that a service package that combines an access line with added features must be priced no lower than the price of the access line and no higher than the total of the unpackaged prices for the individual service elements that comprise the package.

- The provision sets a price floor for a combined service package, but if it is meant to establish a price ceiling as well, it does not do so effectively. There is no real price ceiling because, as a result of the deregulation of vertical services under this bill, the prices for those services could be changed at will by the carrier.

#### **QWEST/MTA AMENDMENTS**

##### **Qwest/MTA amendments to Section 1, promotions**

The proposed amendments adopt changes to the promotions section of the bill that mirror HB 244. The PSC does not object to these amendments.

##### **Qwest/MTA amendments to renumbered Section 2, definitions section**

Where SB 3 as introduced deregulates everything but end users’ access lines, the Qwest/MTA amendments would deregulate every “optional service,” whatever that term means. The definition of “optional service” replaces the now-eliminated SB 3 definition of “vertical service.”

- The “optional services” definition is not an improvement over the former “vertical services” definition because of its broadness and ambiguity.
- The amendments do not address the PSC’s consistent position that deregulation of services is premature until a market is effectively competitive.